

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410**

August 9, 2000

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

MORTGAGEE LETTER 00-32

TO: ALL APPROVED MORTGAGEES

SUBJECT: Mark-to-Market Debt Restructuring Loan Closings

The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) established the Office of Multifamily Housing Assistance Restructuring (OMHAR) for the purpose of restructuring debt on certain multifamily properties insured by FHA that have above-market rents under their Section 8 contracts. Reducing rents to market level may require debt restructuring to the extent necessary to ensure the long-term success of the property. Mark-to-Market Debt Restructurings will either modify the original loan, or pay off the existing mortgage in full prior to its maturity date. A full or partial payment of claim against the FHA insurance fund and/or takeout financing will be used to restructure the debt.

This Mortgagee Letter provides information regarding Mark-to-Market Restructuring Plans, discusses the expectations of mortgagees with mortgages subject to Mark-to-Market Restructuring Plans, and implements changes regarding the process for payment of-claims to mortgagees in the Mark-to-Market transactions.

o Mark-to-Market Restructuring Plans

The Mark-to-Market Restructuring Plan is formalized by a Restructuring Commitment which documents the agreed upon terms of the restructuring. The Restructuring Commitment is executed by the Director of OMHAR, or the OMHAR Regional Office Director, and the borrower. Once executed by the Director of OMHAR or the OMHAR Regional Office Director, the Restructuring Commitment constitutes the Department's approval for the mortgagee to accept prepayment of the mortgage, conditioned on completion of the restructuring and execution and recording of the Mark-to-Market Use Agreement. A copy of the executed Restructuring Commitment will be forwarded to the existing mortgagee upon execution by the borrower.

- o Participating Administrative Entities (PAEs)

OMHAR has contracted with Participating Administrative Entities (PAE) to perform the restructuring process. These entities will contact the mortgagees on behalf of OMHAR during the Restructuring process.

- o Prepayment of Mortgage

A Form HUD-9807 is required to terminate the mortgage by prepayment. For these transactions only, the mortgagee is not required to submit a letter requesting prepayment approval. All other prepayments require written approval from HUD.

- o Mortgagee of Record Information

During the restructuring process, the Participating Administrative Entity (PAE) will request from the mortgagee information regarding ownership of the loan to ensure accuracy of the mortgagee of record information in HUD's Master Institution File. If a discrepancy exists, the mortgagee must expeditiously take the necessary steps to correct HUD's Master Institution File.

- o Request by the Borrower for Payoff Information

Approximately 60 days prior to closing, the existing mortgagee will receive a request for payoff information from the borrower or the borrower's attorney. The mortgagee is required to provide complete date specific payoff information, including 6scrow/impound balances and per diem, to the requesting party in a timely manner.

In the event the unpaid principal balance quoted by the mortgagee is higher than reflected in the HUD accounting records, research will be necessary to correct or clarify the difference, which potentially could delay the closing of the loan transaction. A delayed closing could prompt reissuance of legal documents and unnecessary expense. Therefore, a prompt response from the mortgagee and coordination with the PAE is essential.

- o Third Party Fiduciary to be Responsible for Closing Escrow

Due to the number of parties involved in the closing escrow and in order to facilitate a streamlined closing, a third party fiduciary approved by OMHAR will be responsible for the closing escrow. This Closing Escrow Agent will ensure the receipt and disbursement of all funds. All parties to the closing will be requested to direct all executed documents, forms and funds to the closing escrow.

o Documents Needed for Closing Escrow

The mortgagee will provide to the Closing Escrow Agent the following:

- o executed Application for Section 541(b) Payment
- o written authorization for payment to be sent to the Mark-to-Market closing escrow
- o corporate resolution supporting the signature authority of the party providing said authorization
- o wiring instructions for the closing escrow
- o executed Mortgagee Consent Letter
- o updated payoff information including per diem
- o executed Termination of Existing UCC
- o executed Release of Deed of Trust/Mortgage

The closing escrow instructions will contain a clause providing that the executed Release of Mortgage will not be recorded until the mortgagee has been paid pursuant to its payoff demand.

Further information about the closing and claims process is found in Chapter 7 of the Mark-to-Market Operating Procedures Guide, available on OMHAR's website, www.hud.gov/omhar/mhrrroom.html. If you have any questions regarding this mortgagee letter, please contact Pat Bolster, OMHAR's Post-Closing Management Coordinator at 888-291-4650 or 202-708-0001 x3785.

Sincerely,

William C. Apgar
Assistant Secretary for Housing-
Federal Housing Commissioner